

(Rev. 03/99)

**CIVIL COVER SHEET****06 5474**

The JS44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil case sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM).

**I (a) PLAINTIFFS**

JOHN CLOUGHER AND DENNIS STEIN

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF: **KINGS**  
(Except in Plaintiff Cases)

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Olimpio Lee Squitieri, Esq.  
Daniel R. Lapinski, Esq.  
Squitieri & Fearon, LLP  
32 East 57<sup>th</sup> Street  
New York, New York 10022  
(212) 421-6492  
Attorneys for Plaintiff

**DEFENDANTS**

HOME DEPOT U.S.A., INC.

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT: **STATE OF GEORGIA**  
(IN U.S. PLAINTIFF CASES ONLY)NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION  
OF THE TRACT OF LAND INVOLVED**HURLEY, J.**

ATTORNEYS (IF KNOWN)

Patrick G. Brady, Esq.  
Brian J. Carey, Esq.  
McElroy, Dehaven, Mulvaney & Carpenter, LLP  
Wall Street Plaza  
88 Pine Street, 20<sup>th</sup> Floor  
New York, New York 10005  
(212) 483-9490  
Attorneys for Defendant HOME DEPOT U.S.A., INC.

**II. BASIS OF JURISDICTION** (PLACE AN X IN ONE BOX ONLY)

- |                            |                           |                                       |   |
|----------------------------|---------------------------|---------------------------------------|---|
| <input type="checkbox"/> 1 | U.S. Government Plaintiff | <input type="checkbox"/> 3            | Federal Question (U.S. Government Not a Party)          |
| <input type="checkbox"/> 2 | U.S. Government Defendant | <input checked="" type="checkbox"/> 4 | Diversity (Indicate Citizenship of Parties in Item III) |

**III. CITIZENSHIP OF PRINCIPAL PARTIES**

- (For Diversity Cases Only)
- |   |                                       |                            |   |                            |                                       |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State                   | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4            |
| Citizen of Another State                | <input type="checkbox"/> 2            | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3            | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6            |

**IV. NATURE OF SUIT** (PLACE AN X IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE / PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act  <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)  <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 185 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product  Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability  <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury—Med Malpractice  <input type="checkbox"/> 365 Personal Injury—Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability  <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage—Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 331 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 1291  <b>LINDSAY, M.J.</b> <input type="checkbox"/> 423 Writ of Mandamus 28 USC 1295  <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	LABOR	SOCIAL SECURITY
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/ Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 510 Motions to Vacate Sentence Habitual Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 730 Labor/Management Reporting & Disclosure Act  <input type="checkbox"/> 740 Railway Labor Act <input checked="" type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DWWC/DWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))
				FEDERAL TAX SUITS
				<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7809
				<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 880 Other Statutory Actions

**V. ORIGIN**

(PLACE AN X IN ONE BOX ONLY)

- |  |  |  |   |  |   |  |
|--|--|--|---|--|---|--|
| <input type="checkbox"/> 1 Original Proceeding | <input checked="" type="checkbox"/> 2 Removed from State Court | <input type="checkbox"/> 3 Remanded from Appellate Court | <input type="checkbox"/> 4 Reinstated or Reopened | <input type="checkbox"/> 5 Transferred from another district (Specify) | <input type="checkbox"/> 6 Multidistrict Litigation | <input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judgment |
|--|--|--|---|--|---|--|

**VI. CAUSE OF ACTION**

(CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY.)

Plaintiffs, citizens of New York, on behalf of themselves and others similarly situated, allege that defendant, a Delaware corporation with its principal place of business in Georgia, unlawfully denied them and the putative class members premium overtime compensation for hours worked over 40 per workweek, in violation of the New York Labor Law §§ 650, *et seq.*, and other laws.

**VII. REQUESTED IN COMPLAINT:**  CHECK IF THIS IS A **CLASS ACTION** UNDER F.R.C.P. 23**DEMAND \$**Check YES only if demanded in complaint:  
**JURY DEMAND:**  YES  NO**VIII. RELATED CASE(S) IF ANY** **JUDGE N/A****POCKET NUMBER N/A**

DATE: October 10, 2006

SIGNATURE OF ATTORNEY OF RECORD:

*Patrick G. Brady*UNITED STATES DISTRICT COURT  
FOR OFFICE USE ONLYRECEIPT # **AMOUNT** **APPLYING IFF** **JUDGE** **MAG. JUDGE****DRH****ARL****5474**

**ARBITRATION CERTIFICATION**

I, Patrick G. Brady, counsel for Home Depot USA, Inc. do hereby certify pursuant to the Local Arbitration Rule 83.10 that to the best of my knowledge and belief the damages recoverable in the above captioned civil action exceed the sum of \$150,000 exclusive of interest and costs.  
Relief other than monetary damages is sought.

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**DISCLOSURE STATEMENT - FEDERAL RULES CIVIL PROCEDURE 7.1**

Identify any parent corporation and any publicly held corporation that owns 10% or more or its stocks:  
Home Depot, Inc.

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**Please refer to NY-E Division of Business Rule 50.1(d)(2)**

1.) Is the civil action being filed in the Eastern District of New York removed from a New York State court located in Nassau or Suffolk County: No

2.) If you answered "no" above:

a.) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in Nassau or Suffolk County? Yes

b.) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in the Eastern District? Yes

If your answer to question 2 (b) is "No," does the defendant (or a majority of the defendants, if there is more than one) reside in Nassau or Suffolk County, or, in an interpleader action, does the claimant (or a majority of the claimants, if there is more than one) reside in Nassau or Suffolk County? N/A

(Note: A corporation shall be considered a resident of the County in which it has the most significant contacts).

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**I am currently admitted in the Eastern District of New York and currently a member in good standing of the bar of this court.**

Yes X

No \_\_\_\_\_

**Are you currently the subject of any disciplinary action(s) in this or any other state or federal court?**

Yes \_\_\_\_\_ (If yes, please explain)

No X \_\_\_\_\_

Please provide your E-MAIL Address and bar code below. Your bar code consists of the initials of your first and last name and the last four digits of your social security number or any other four digit number registered by the attorney with the Clerk of Court.

(This information must be provided pursuant to local rule 11.1(b) of the civil rules).

**ATTORNEY BAR CODE:** PR 1114

**E-MAIL Address:** pbrady@mdmc-law.com

I consent to the use of electronic filing procedures adopted by the Court in Administrative Order No. 97-12, "In re Electronic Filing Procedures(EFP)", and consent to the electronic service of all papers.

Signature: Patrick G. Brady